



State of Wisconsin • DEPARTMENT OF REVENUE

125 SOUTH WEBSTER STREET • P.O. BOX 8933 • MADISON, WISCONSIN 53708-8933 • FAX (608) 266-5718

REAL ESTATE TRANSFER NEWS

June 1993

The following questions and answers are given as general interpretations of the Wisconsin Administrative Code and Statutes:

- 1Q. The definition of real estate within the transfer fee law includes fixtures, stock in a cooperative building and improvements on leased land. My client does not want to record evidence (Bill of sale, cooperative stock or a conveyance agreement) of his purchase, but wishes to pay the transfer fee. Is my client required to record anything?
- A. The Wisconsin Department of Revenue cannot require any recordation of a document at a County Register of Deeds office. A transfer fee return, however must be filed, as a prerequisite to recording a conveyance or other document evidencing a conveyance of an interest in real estate with that office.

Your client may voluntarily file a transfer fee return and pay the fee due directly with our Madison office. The address is:

Real Estate Transfer Fee
Wisconsin Department of Revenue
P.O. Box 8933
Madison, WI 53708-8933

- 2Q. In a grantor revocable trust (living trust), is the grantor automatically the first primary beneficiary of the trust making conveyances to the trust exempt?
- A. No. If, however, the grantor controls the use of the property, receives all the income which it produces during his or her lifetime, and the property is conveyed debt free to the trust, then the transfer would be exempt under sec. 77.25(16), Stats.
- 3Q. May a "timeshare" in a vacation condominium that is considered real property, be traded, i.e. a week in December for a week in March, transfer fee free?
- A. No, these conveyances must be treated the same as all other exchanges; two fees, two returns.
- 4Q. A developer forecloses on a timeshare owner. Can the developer get a refund of the fee paid where the sale was under a land contract executed after August 1992?
- A. No, but the conveyance back to the developer is exempt pursuant to sec. 77.25(14), Stats.

5Q. Property is owned by "A" and "B". They are unrelated. "B" transfers his ownership interest in that property to his corporation. The corporation is owned by him and his wife. Is this transfer exempt under sec. 77.25(15), Stats?

A. If "B's" property interest is not subject to any debt and it is conveyed for stock in the corporation, it is exempt from the fee.

6Q. Two people own a parcel of land as tenants-in-common. The first person gifts his share to the second person. Is this conveyance exempt by partition?

A. No. Partition is defined as "The dividing of lands held by joint tenants, coparceners, or tenants in common, into distinct portions, so that they may hold them in severalty, by mutual agreement or court ordered. Partition does not create or convey a new or additional title or interest but merely severs the unity of possession."

7Q. I want to amend a previously recorded land contract (recorded prior to July 31, 1992). Will this recordation be subject to the transfer fee?

A. Yes. The Wisconsin Department of Revenue's position is that for all land contracts where the real estate transfer fee has been deferred and later re-recorded after July 1, 1992, for whatever reason, will cause the fee to be due and payable. The amendment to the statute effective on that date repealed the deferral.

Please note that all questions and answers regarding land contracts must be reinterpreted because of this "deferral" repeal.

8Q. Are assignments of a land contract vendee's interest subject to the transfer fee?

A. Yes. Please see the definition of a conveyance at sec. 77.21, Stats. It specifically includes assignments of a vendee's interest in a land contract.

9Q. "A" and "B" want to partition their 120 acre farm. They decided that "A" will get 40 acres including the buildings and "B" will get the balance of the farm. Based upon an appraisal, "A's" portion has a value of \$150,000 while "B's" portion is valued at \$95,000. "A" is to pay "B" \$27,500 to consummate this transaction.

Is this considered a partition for purposes of the transfer fee?

A. It is considered part sale, part partition for purposes of Chapter 77. A fee is due on "A's" conveyance computed on the value of real property that he purchased. That is .003 times \$27,500 or \$82.50. The value of "A's" property less the value of the partition (\$150,000 - \$122,500). A true partition would be that each joint owner would receive property valued at $\frac{1}{2}$ of the total property partitioned $[(\$150,000 + \$95,000) \div 2 = \$122,500]$.

10Q. Two partners as agents for their partnership own partnership property as joint tenants. One partner sells his partnership interest to the other. The deed representing this sale names the grantors as joint tenants and names the sole remaining partner as the grantee. Is this conveyance subject to the fee?

A. Yes, and the fee is based upon the full value of the property! Normally, the sale of a partnership interest is considered personal property and not subject to the fee. In this case, the sale terminates the partnership causing the taxable event. Since this property was "owned" by the partnership, it is the same as Partnership X dissolving and transferring property to Partners A & B, with one partner receiving cash, the other real property.

11Q. A divorce decree filed with the Register of Deeds office conveys property to a former spouse. Must a transfer fee form be filed with it?

A. Yes, but it is exempt from the fee pursuant to Tax 15.05(4), Wis. Adm. Code.

12Q. I remarried after my first husband passed away. I want to give my former in-laws the home that I owned with their son. Would this conveyance be exempt?

A. Yes, use exemption 8.

13Q. A partnership dissolves and transfers its real property to four unrelated partners. Then, three of the former partners sell their property to the fourth former partner. Are these conveyances subject to the transfer fee?

A. Yes.

14Q. An individual transfers property to his or her solely owned corporation. The transfer of property is debt free and the transaction will be recorded as an additional contribution of capital. Is this conveyance exempt from the transfer fee.

A. Yes.

15Q. Is an assignment of a vendor's interest in a land contract exempt from the transfer fee?

A. Yes.

16Q. Is a conveyance that is made under a Confirmed Plan of Reorganization of the U.S. Bankruptcy Code subject to the transfer fee?

A. No. See 11 U.S.C.S. § 1146(c).

17Q. Is a transfer fee ever due on a Sheriff's sale?

A. Yes, whenever a third party is the successful bidder. A "third party" is defined as someone who is not holding a lien or mortgage on the property or is not the seller (vendor) of that property on a land contract.

18Q. Are Farm Credit Banks federally chartered instrumentalities of the U.S.?

A. Yes. The Agricultural Credit Act of 1987 merged District Federal Intermediate Credit Bank and Federal Land Bank into Farm Credit Banks.

19Q. My parents are purchasing a life estate in property owned by their church for \$90,000. The accepted offer to purchase (agreement) will be filed with the Register of Deeds in my county. Will this require a transfer form and fee?

A. Yes, a conveyance of a life estate interest in real property is subject to Chapter 77 of the Wisconsin Statutes.

20Q. I am filing a deed in satisfaction of an original land contract which was signed and delivered to the vendee in June 1979. The contract was between my client and the state of Wisconsin. Is a transfer fee due?

A. No! Prior to September 1, 1987, conveyances to governmental agencies were exempt from the transfer fee. A transfer fee was not deferred in this case; a fee was never due.